



OFFICE OF THE POLICE COMMISSIONER

ONE POLICE PLAZA • ROOM 1400

January 18, 2013

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Mohamed Abdelal**
Tax Registry No. 939838
50 Precinct
Disciplinary Case Nos. 2008-254, 2009-320,
2009-436 & 2011-5996

The above named member of the service appeared before Deputy Commissioner Martin G. Karopkin on July 13, 2011 and was charged with the following:

DISCIPLINARY CASE NO. 2008-254

1. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on-duty, on or about September 22, 2007, within the confines of the 50th Precinct, did fail to properly search a prisoner, as required.

P.G. 210-01

PRISONERS GENERAL PROCEDURE

2. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on-duty, on or about September 22, 2007, within the confines of the 50th Precinct, did fail to properly maintain a prisoner roster (PD 244-145), as required.

P.G. 210-01

PRISONERS GENERAL PROCEDURE

DISCIPLINARY CASE NO. 2009-320

1. Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, while off duty, on or about March 30, 2008, did fail to notify his Commanding Officer when attempting to visit an inmate in Hudson County Correctional Facility, as required.

P.G. Interim Order #11, 205 Series, Page 1, Paragraph 2 VISITING INMATES

2. Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, while off-duty, on or about March 30, 2008, did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer did provide false or misleading information to Immigration and Naturalization Services Officer(s), in that said Police Officer did represent to said Officer(s) that he needed to interview an inmate as a part of an Official Investigation involving INTERPOL, when said Police Officer was not involved in any such investigation.

P.G. 203-10, Page 1, Paragraph 5

PUBLIC CONTACT – PROHIBITED CONDUCT

DISCIPLINARY CASE NO. 2009-320
POLICE OFFICER MOHAMED ABDELAL

3. Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, on or about and between January 1, 2009 and May 20, 2009, was engaged in off-duty employment without obtaining an approved off duty employment application, as required.

P.G. 205-40, Page 1, Paragraph 1

**OFF-DUTY EMPLOYMENT
PERSONNEL MATTERS**

DISCIPLINARY CASE NO. 2009-436

1. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between July 15, 2008 and July 19, 2008, was wrongfully and without just cause absent from his residence beyond his authorized pass hours without permission or authority of said Officer's District Surgeon and/or the Medical Division Sick Desk Supervisor. *(As amended)*

P.G. 205-01, Page 2, Paragraph 4

REPORTING SICK

2. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between July 15, 2008 and July 19, 2008, while on sick report, did leave the confines of the City or residence counties without the approval of the Chief of Personnel.

P.G. 205-01, Page 6,

ADDITIONAL DATA -REPORTING SICK

3. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between June 2008 to March 10, 2009, did fail to reside within the confines of the City or residence counties, as required. *(As amended)*

P.G. 203-18, Page 1, Paragraph 6

RESIDENCE REQUIREMENTS

4. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between June 2008 to March 10, 2009, did wrongfully cause false entries to be made in Department records, in that said Police Officer did report a New York address, when said Police Officer did in fact reside in [REDACTED]. *(As amended)*

P.G. 203-18, Page 1, Paragraph 6

RESIDENCE REQUIREMENTS

DISCIPLINARY CASE NO. 2011-5996
POLICE OFFICER MOHAMED ABDELAL

1. Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, on or about February 8, 2011, within the confines of the 50th Precinct, in Bronx County, said Officer did fail and neglect to perform said Officer's duties, to wit: said Officer failed to prepare a UF 250 following a stop and question of a male known to this Department, as directed by competent authority.

P.G. 203-05, Page 1, Paragraph 1 PERFORMANCE ON DUTY – GENERAL REGULATIONS

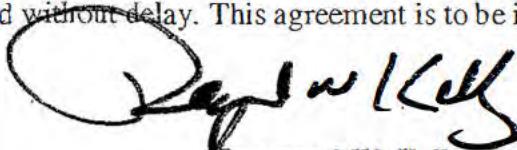
2. Said Police Officer Mohamed Abdelal, assigned as indicated in Specification #1, on or about February 8, 2011, within the confines of the 50th Precinct, in Bronx County, did fail and neglect to maintain said Officer's Activity log (PD 112-145), to wit: said Officer failed to make entries relating to a stop and question of a male known to this Department.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS – COMMAND OPERATIONS

In a Memorandum dated May 23, 2012, Deputy Commissioner Martin G. Karopkin found the Respondent GUILTY of Specification Nos. 1 and 2 in Disciplinary Case No. 2008-254. The Respondent was also found GUILTY of Specification Nos. 1, 2 and 3 in Disciplinary Case No. 2009 320. In Disciplinary Case No. 2009-436, the Respondent was found GUILTY of Specification Nos. 1, 2, 3 and 4. Regarding Disciplinary Case No. 2011-5996, Specification Nos. 1 and 2 were DISMISSED. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

The Respondent was found guilty of engaging in several acts of misconduct which warrant his immediate separation from the Department. However, in lieu of dismissal from the Department at this time, the Respondent shall be offered a post trial negotiated agreement, in which he will immediately file for Vested Interest Retirement, forfeit thirty (30) vacation days, thirty (30) suspension days (to be served), waive all time and leave balances, including Terminal Leave, if any, and all suspension days (with and without pay) previously served, if any. The Respondent is to also be immediately placed on One-Year Dismissal Probation. The Respondent will retire while on suspended status.

Such vested-interest retirement shall also include the Respondent's written agreement to not initiate administrative applications or judicial proceedings against the New York City Police Department to seek reinstatement or return to the Department. If the Respondent does not agree to the terms of this vested-interest retirement agreement as noted, this Office is to be notified without delay. This agreement is to be implemented **IMMEDIATELY**.



Raymond W. Kelly
Police Commissioner



POLICE DEPARTMENT

May 23, 2012

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Mohamed Abdelal
Tax Registry No. 939838
50 Precinct
Disciplinary Case Nos. 2008 254, 2009 320,
2009-436 & 2011-5996

The above-named member of the Department appeared before Assistant Deputy Commissioner of Trials John Grappone on July 13, 2011 and August 12, 2011. He appeared before me on January 31, 2012, March 13, 2012 and April 11, 2012¹ charged with the following:

Disciplinary Case No. 2008-254

1. Said Police Officer Mohammed² Abdelal, while assigned to the 50th Precinct, while on duty, on or about September 22, 2007, within the confines of the 50th Precinct, did fail to properly search a prisoner, as required.

P.G. 210-01 PRISONERS GENERAL PROCEDURE

2. Said Police Office Mohammed³ Abdelal, while assigned to the 50th Precinct, while on duty, on or about September 22, 2007, within the confines of he [sic] 50th Precinct, did fail to properly maintain a prisoner roster (PD 244-145), as required.

P.G. 210 01 PRISONERS GENERAL PROCEDURE

¹ The lengthy period of time to try this case was explained by the Assistant Department Advocate during the proceedings of April 11, 2012. Essentially, the delay resulted from the fact that additional charges arose after the commencement of the trial. The trial was postponed and those charges were eventually incorporated into this proceeding (see, Disciplinary Case No. 2011-5996). Additionally, there were technical difficulties in obtaining the presence of certain witnesses.

² As written in charges. The correct spelling of Respondent's first name is "Mohamed."

³ Ibid.

Disciplinary Case No. 2009 320

1. Said Police Officer Mohamed Abdelal, assigned to the [sic] 50th Precinct, while off duty, on or about March 30, 2008, did fail notify his Commanding Officer when attempting to visit an inmate in Hudson County Correctional Facility, as required.

P.G. Interim Order #11, 205 Series, Page 1, Paragraph 2 VISITING INMATES

2. Said Police Officer Mohamed Abdelal, assigned to the 50th Precinct, while off-duty, on or about March 30, 2008 did wrongfully engage in conduct prejudicial to the good order, efficiency and discipline of the Department, in that said Police Officer did provide false or misleading information to Immigration and Naturalization Services Officer(s), in that said Police Officer did represent to said Officer(s) that he needed to interview an inmate as a part of an Official Investigation involving INTERPOL, when said Police Officer was not involved in any such investigation.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT PROHIBITED CONDUCT

3. Said Police Officer Mohamed Abdulla⁴, assigned to the 50th Precinct, on or about and between January 1, 2009 and May 20, 2009, was engaged in off-duty employment without obtaining an approved off duty employment application, as required.

P.G. 205-40, Page 1, Paragraph 1 OFF DUTY EMPLOYMENT, PERSONNEL MATTERS

Disciplinary Case No. 2009 436

1. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between July 15, 2008 and July 19, 2008, was wrongfully and without just cause absent from his residence beyond his authorized pass hours without permission or authority of said Officer's District Surgeon and/or the Medical Division Sick Desk Supervisor. (*As amended*)

P.G. 205-01, Page 2, Paragraph 4 REPORTING SICK

2. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between July 15, 2008 and July 19, 2008, while on sick report, did leave the confines of the City or residence counties without the approval of the Chief of Personnel.

P.G. 205-01, Page 6, ADDITIONAL DATA – REPORTING SICK

⁴ As written in charges. The correct spelling of Respondent's surname is "Abdelal."

3. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between June 2008 to March 10, 2009, did fail to reside within the confines of the City or residence counties, as required. (*As amended*)

P.G. 203 18, Page 1, Paragraph 6 RESIDENCE REQUIREMENTS

4. Said Police Officer Mohamed Abdelal, while assigned to the 50th Precinct, while on sick report, on or about and between June 2008 to March 10, 2009, did wrongfully cause false entries to be made in Department records, in that said Police Officer did report a New York address, when said Police Officer did in fact reside in [REDACTED] (As amended)

P.G. 203-18, Page 1, Paragraph 6 RESIDENCE REQUIREMENTS

Disciplinary Case No. 2011-5996

1. Said Police Officer Mohammed⁵ Abdelal, assigned to the 50th Precinct, on or about February 8, 2011, within the confines of the 50th Precinct, in Bronx County, said officer did fail and neglect to perform said officer's duties, to wit said officer failed to prepare a UF 250 following a stop and question of a male known to this Department, as directed by competent authority.

P.G. 203 05, Page 1, Paragraph 1 PERFORMANCE ON DUTY - GENERAL REGULATIONS

2. Said Police Officer Mohammed⁶ Abdelal, assigned as indicated in Specification #1, on or about February 8, 2011, within the confines of the 50th Precinct, in Bronx County, did fail and neglect to maintain said officer's Activity log (PD 112-145), to wit: said officer failed to make entries relating a [sic] stop and question of a male known to this Department.

P.G. 212-08, Page 1, Paragraph 1 ACTIVITY LOGS - COMMAND OPERATIONS

The Department was represented by Beth Douglas, Esq., Department Advocate's Office, and Respondent was represented by Michael Martinez, Esq.

In Disciplinary Case No. 2008 254, Respondent, through his counsel, entered a plea of Not Guilty to Specification No. 1 and a plea of Guilty to Specification No. 2. In Disciplinary Case No. 2009 320, Respondent entered a plea of Not Guilty to

⁵ As written in charges. The correct spelling of Respondent's first name is "Mohamed."

⁶ Ibid.

Specification No. 2 and a plea of Guilty to Specification Nos. 1 and 3. In Disciplinary Case No. 2009-436, Respondent entered a plea of Guilty to the subject charges. In Disciplinary Case No. 2011-5996, Respondent, entered a plea of Not Guilty.

A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2008 254

Respondent is found Guilty of Specification No. 1. Respondent, having pleaded Guilty, is found Guilty of Specification No. 2.

Disciplinary Case No. 2009-320

Respondent, having pleaded Guilty, is found Guilty of Specification Nos. 1 and 3. Respondent is found Guilty of Specification No. 2.

Disciplinary Case No. 2009 436

Respondent, having pleaded Guilty, is found Guilty as charged.

Disciplinary Case No. 2011-5996

It is recommended that these charges be Dismissed.

SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Mercedes Fabregas, Police Officer James Holmes, Sergeant Theresa Wilson, Michael Prins, Migdoel Rivera, Sergeant Antonio Torres, Sergeant Douglass Maresca and Undercover Officer WXYZ as witnesses.

Lieutenant Mercedes Fabregas

Fabregas is assigned to Internal Affairs Bureau (IAB) Group 21 in the Bronx. She investigated an allegation that on March 30, 2008, Respondent had attempted to visit an inmate at the Hudson County Correctional Facility and that he had identified himself as a representative of Interpol. Lieutenant Barbieri and Detective Beltran, investigators from Group 21 had gone out on that date to interview staff at that facility that day.

Fabregas said she became involved in the investigation the next day. As part of the investigation, inquiries were made through the Intelligence and Counterterrorism Divisions, and other units, in an attempt to learn about "Person A"⁷, the person Respondent attempted to visit. They ascertained that he was being held on an immigration hold and not for anything criminal.

Fabregas explained that Interim Order 11 [issued February 4, 2004] requires a member of the service to obtain permission before visiting an incarcerated person. This would be in the form of a "UF-49" [Typed Letterhead] which would set forth who was being visited and why. It would require approval from IAB. She noted that Respondent had not obtained approval and had not followed procedures.

⁷ As spelled by the Assistant Department Advocate. Counsel for Respondent indicated that this person's name is "Person A." The name was spelled both ways in trial transcripts and no other witnesses testified to the correct spelling of the name.

During his official Department interview, Respondent acknowledged that he had not followed procedures. During that interview Fabregas also learned that Respondent had employment freelancing for Channel 13. He had asserted that he previously had permission for this off-duty employment but that he had not updated it.

On cross-examination, Fabregas agreed that lapsed off-duty employment authorization is a fairly common issue and there was no reason to believe that Respondent's employment was something the Department would not allow Respondent to do.

Fabregas agreed that Inspector McDermot had been involved in the supervision of the investigation and that he had made contact with Joint Terrorism Task Force (JTF) in an attempt to find out about Person A. She said JTF was contacted because of the amount of money Respondent claimed Person A had stolen; something like \$30 million. She agreed that the fact that Respondent was from the Middle East was in the back of her mind but she said that she would have made an inquiry no matter what the nationality of the person, given the amount of money involved. She agreed that no terrorist activity was ever associated with this case or with Respondent.

Fabregas agreed that before Respondent was interviewed by the Department, there was a controlled phone call from Immigration and Customs Enforcement (ICE) Agent Rafael Levinore to Respondent to see if there was a connection between Respondent and Person A. During that call, Respondent told Levinore basically what he later told the Department; that Person A had taken \$30 million and that he was not a good guy. She said they could not establish that Respondent and Person A were friends and as a result there was no criminal association charge.

Fabregas asserted that the investigators had learned that Person A was being extradited because he had lied in his visa application. She did not recall the specifics but believed it had to do with his wife's alleged illness.

Fabregas recalled that she had learned about the claim that Person A stole \$30 million from Respondent. She did not recall learning it from other sources in her investigation. After reviewing a worksheet, she agreed that her group was informed by ICE that a prosecutor in Egypt had presented what amounted to an asset recovery request. This was because over 200 people had charged that Person A had swindled them into phony investments in mobile phones, computers and medical devices. For some reason, this was not part of the reason he was being deported.

She agreed that Respondent did not meet with Person A. She agreed that Respondent was subject to surveillance. She said this related to his location in New Jersey and to see if there was any criminal association or any involvement with the \$30 million. The surveillance did not have anything to do with possible terrorism. She believed E-ZPass records might have been obtained. She asserted that they were unable to find any connection between Respondent and Person A. They were unable to interview Person A but "agents" did interview him and he denied any knowledge of Respondent.

Fabregas agreed that the original call out indicates that the effort by Respondent to get to see Person A was on video and audio recording. She agreed that other documents repeated this assertion. She indicated that, in fact, there was only video and no audio. She said the correctional facility equipment had the capacity to make both audio and video recordings. Based on conversation she had, she believed that this area was only subject to video recording.

Police Officer James Holmes

Holmes is currently on “permanent sick” leave. On September 22, 2007, he was assigned to the 50 Precinct doing a 2315 by 0750 tour. At 0550 hours, he was assigned to the male prisoner cells. He did a thorough check of the cells. Holmes agreed that he had logged in approximately eight prisoners on the Prisoner Roster for that day [Department’s Exhibit (DX) 1]. He stated that when a prisoner is lodged the cell attendant has to do a routine check to make sure the prisoners are safe. Holmes stated that he first searches the prisoner. He said he would do a pat down for contraband or dangerous items. He would remove the prisoner’s shoelaces and belt which he said is required.

Holmes stated that he was relieved by Respondent at 0720 hours, which is documented in his Activity Log⁸ (DX 2). His Activity Log also documented that a “walk through” was conducted. Holmes went end of tour at 0750 hours.

Holmes also testified that he did half hour checks of the cells. He did not go in when prisoners were there. Nothing resulted from his visual checks. He did not observe shoelaces during these checks.

On cross-examination, Holmes said that he believed the cells were empty when he was assigned to the cells but that there was an expectation that prisoners were coming. He agreed that prisoners might come from arrests in the 50 Precinct but they could come from other locations such as another precinct if their cells were full. He agreed they also might come from Central Booking. He agreed they also might be returning from the hospital.

Holmes agreed that when an arrest is made on the street there is usually a pat down to make sure there are no weapons. Then another search is conducted in front of

⁸ Also informally referred to as “memo book” in testimony.

the desk and third search is done when they are lodged in the cells. He indicated that the cell attendant lodges them and conducts that search. He said the arresting officer might remain while that search was conducted or might leave.

Holmes said that these were not strip searches, which could only be authorized by a sergeant, and he did not have prisoners lift up their shirts or pull down their pants. He agreed that the main thing they were looking for was weapons. He agreed that shoelaces and belts must be taken from prisoners before they go into a cell. He agreed that when prisoners are sent to Central Booking, they are given these items back but he noted that they are usually put into their pockets. This would be at a time when they are handcuffed and therefore would not have access to them.

Holmes agreed that if they are returned from Central Booking they would be searched again as "every time they leave and enter a cell they should be searched." He agreed that if an officer on such a return were to look down and see that the prisoner does not have shoelaces or a belt on, that officer can do a pat down but cannot do a strip search. Holmes acknowledged that if a prisoner wanted to hide shoelaces, the chances of an officer finding it, if it were well hidden, would be very low and there would be no basis to do a strip search for it.

Holmes agreed that the cell officer must remain in the cell area and if he has to leave even for a few seconds he is supposed to get someone to keep an eye on the prisoners. Also, he agreed that every half hour the cell officer is supposed to get up and do a visual inspection of everybody to insure that they are alright.

Holmes also agreed that it was not uncommon for prisoners to sleep in the cells in all sorts of positions that they might not do at home.

Sergeant Theresa Wilson

Wilson is a 22-year member of the Department. On September 22, 2007, she was the 50 Precinct Domestic Violence sergeant. She was preparing to go on domestic violence home visits when the desk sergeant, Cheeks, asked if she could cover the desk while she went to meal. Wilson said she agreed and post-changed herself to the desk. Cheeks returned to the desk about five minutes later to have her meal and Wilson said she asked Cheeks if she would retake the desk duty so she could make her domestic violence home visits. Wilson said she volunteered to do the prisoner check for her.

Explaining what a prisoner check is, Wilson said it involved going over the log and then checking each cell. As she was doing this inspection, she saw someone under the bench. She asked him to come out to make sure he was okay and he did not move. She took a closer look at the man and his eyes were open and he "looked strange." She got on her knees on the cell floor and noticed a shoelace hanging from his neck. She called for a knife or scissors. When she got a pair of scissors, she cut the shoelace from his neck. She saw that there was a bloody ring around the man's neck. She then tried to get him air.

Wilson explained that while the man was not hanging from anything, he had tied the shoelace to the bars of the bench. She said that occurs in correctional institutions so that no one will notice.

She testified that a cell attendant at the 50 Precinct in September 2007 would have been responsible for security, would have to check the prisoners to make sure they are okay and secure. She said the responsibility to search might vary. If you were the desk

sergeant at 1500 hours and you had prisoners coming in since 0700 hours from the first, second and now third platoon, you would do a re-search. If you were on the desk at 1700 hours, there would be no need for a re-search and a visual check would suffice because the prisoners would have been searched [at the start of] the 4 to 12 tour.

When asked what a cell officer at 1150 hours should do with regard to individuals who are entering the cell, Wilson said that one would do a basic search, including a pat down, the removal of everything from the pockets and the removal of shoelaces, belts and anything that can harm a prisoner or facilitate escape.

Once the prisoner is in the cell, the cell attendant would have to do periodic visual checks every 30 minutes or when they deem it necessary.

On the day in question, she had some interaction with Respondent. She did not know the exact words but she did say that she “needed a scissors, get in here, whatever.” She also recalled instructing Respondent to guard the cell door which was now open as there were two other prisoners in that cell.

On cross examination, Wilson testified that Respondent let her in the cell. Wilson was asked some questions about the matter but was not subjected to a formal Department interview. She said that prior to entering the cell she got on her knees and saw the string. [around the prisoner’s neck]. Respondent, she said, was already inside. She agreed Respondent got moving once she alerted him to what was occurring. Wilson agreed that she ran to the desk looking for a knife or scissors and that Respondent remained with the prisoner. She agreed that during this time Respondent was attempting to help the prisoner to breathe. She agreed that the desk sergeant should do an inspection at least every 30 minutes but noted that it varies. The cell officer should do the same, except that

he is supposed to remain in the area. She agreed that prisoners sometimes fall asleep on the floor.

Wilson agreed that the prisoner did not die. She could not remember if he had a beard. She believed he was being held on a driving while intoxicated charge. She agreed that that might mean that he was intoxicated earlier.

Michael Prins

Prins is a sergeant at the Hudson County Department of Corrections. On March 30, 2008, he was in charge of service and security on the perimeter of the jail. On that day, he was summoned to the lobby area where he was informed that a New York City police officer was there on a professional visit. The officer involved was Respondent, who produced his identification card (ID). Prins said he inquired as to what type of interview he would be conducting and Respondent told him that it was a criminal investigation. Prins testified: "He [Respondent] says he was representing the New York City Department of Police and also he used the word Interpol, he was a representative on loan to Interpol."

Prins said he became suspicious. While he did not remember the name of the prisoner Respondent sought to see he knew that that person was being held as an ICE detainee. Prins said he noticed that while Respondent claimed to be there to conduct an interview, he did not have a pad or pencil.

Prins used a ruse of claiming to go to a consult with a supervisor to leave the room with Respondent's ID and took the opportunity to record information about Respondent. He went back out and told Respondent he could not see the prisoner and

that policy required that Respondent's department formally contact his department in advance of a visit. As he was talking to Respondent, he was told by Respondent that it was really a personal matter. Respondent said that people had been robbed and that he wanted to identify the person who was in the facility and make it sure it was the right person. He further wanted to know what happened to the \$30 million that person had stolen.

Prins volunteered that he made the Respondent repeat this several times because he knew they were being recorded and he thought that might be useful. He acknowledged becoming annoyed with Respondent and said that he eventually called the Department to report what had occurred. He did not permit Respondent to see the prisoner. Within an hour or two after his call, two officers from this Department, he believed a sergeant and lieutenant, came out to his facility and interviewed him.

On cross examination, Prins affirmed that he has been a correction officer for 20 years and has been a sergeant for six years with two years in that rank when this incident occurred.

Prins explained that ICE prisoners are allowed visitors. The prisoner makes a list of authorized persons and then those persons can come to the prison, be searched and are allowed to see the prisoner.

Prins agreed that it was his understanding that there was an audio and video recording of his conversation with Respondent. Prins stated that he had not heard or seen any recording of the visit. He had not been aware that there was no audio recording of the visit and he reiterated that, to the best of his knowledge, there should have been.

He indicated that he became concerned about Respondent because Respondent said he was conducting a “criminal investigation” and he did not have a pad with him. Prins agreed that at some point Respondent segued and said it was basically a personal matter.

Prins denied that the fact that Respondent was visiting someone from Egypt or the Middle East had anything to do with his decision. Prins agreed that Respondent showed his ID. Prins recalled that because Respondent’s assignment to the 50 Precinct was in the first call out to the Department, Respondent must have told him where he was assigned.

Prins agreed that when he learned that the visit was a personal matter, he became more authoritative with Respondent. He agreed that when he started out he thought it was something of a professional, on-duty police business matter and, when he learned it was personal in nature, he became annoyed. He agreed that he spoke as a sergeant would to a subordinate. He agreed that Respondent was polite and respectful at all times. He agreed that when he told Respondent the proper way to make a visit, Respondent left without incident.

Prins indicated that Respondent had said that he wanted to know what the prisoner, Person A, had done with the \$30 million, and he wanted to know if it was really him. Prins testified that the only time Respondent used the word “investigation” was in the beginning when Respondent stated that he was there for a criminal investigation.

He did not recall Respondent telling him that Person A was wanted somewhere else. He did recall that Respondent had said that he had tried to get a hold of the Immigration and Naturalization Service (INS). He recalled telling Respondent that it was the weekend and he would not get anyone at INS.

Prins did not bring any of his reports with him to court. He said he turned them over to his department. He said he did not review anything before testifying, beyond being briefed by the Advocate about what would occur. He said he did listen to a tape recording of his interview with IAB. Prins did recall that he had volunteered that the person Respondent wanted to visit was of Middle Eastern descent. Prins denied that the Middle East issue had anything to do with what raised his antenna up about Respondent. He said he was referring to Person A, who he noted was probably not a “nice guy” if he is in the Hudson County facility.

Prins agreed that the word “Interpol” was used. He had no idea if they exist outside of the movies. He agreed that over his 20-year career he has had contact with many law enforcement agencies. He agreed that Respondent had said that he was on loan to Interpol. He said he was sure those words were used. Prins testified that he is sure that Respondent did not say that Interpol is interested in this guy because he recalled that Respondent said that he was on loan to Interpol.

Prins agreed that shortly thereafter, Respondent showed his Department ID. He did not show any Interpol ID. He agreed that shortly thereafter, Respondent told him that his visit to the jail was “more of a personal thing” but Prins noted that this admission occurred “after I grilled him.” Prins agreed that he did not detain Respondent. He agreed that Respondent had showed him his cell phone and that he had said that he wanted to visually identify the person in custody.

Migdoel Rivera

Rivera is a correction officer who works at the Hudson County Correctional Facility in Kearny, NJ. On March 30, 2008, he was on lobby duty. Rivera recalled that on that day, which was on a weekend, Respondent came to see a detainee. Because someone from another department would need permission, he notified his sergeant, Prins. Rivera testified that Respondent identified himself as a member of this Department and he recalled that Respondent needed a lock box for his gun.

Rivera recalled "bits and pieces" of the conversation between Respondent and Prins. He recalled some discussion about a large amount of money.

On cross-examination, Rivera stated that he did not recall any mention by Respondent of Interpol, the Secret Service or anything other than NYPD. He agreed that he did not believe Respondent was doing anything improper at the time. He agreed that Respondent gave the name of the person he wanted to see and that when he looked into the system he found that the person was on high bail. He did not know if the recording system in the facility carried audio as well as video.

Sergeant Antonio Torres

Torres is assigned to IAB Group 52, where he conducts both random and targeted integrity tests. On February 8, 2011, he conducted a targeted integrity test on Respondent. Respondent was targeted because he was on disciplinary monitoring.

Torres explained that the tests are planned in advance and that there is a conferral with an assistant district attorney to avoid entrapment on targeted tests. He believed such a conferral was done in this case. He said the test involved a male undercover officer

(UC) and a female UC. He said they also made a video and audio recording of the test (DX 3 and 4).

Torres explained that after the test there is a review to determine if there is a pass, a failure or if it is indeterminate. After this test, they did not determine the result and awaited review of the Stop, Question and Frisk Report (UF-250). In this case, none was filed. After that, they review Respondent's Activity Log. He believed there was no record of the job.

Torres recalled that the male UC used the fictitious name "Person B" and that name was not found in Respondent's Activity Log for that day (DX 5).

On cross-examination, Torres agreed that for targeted integrity tests they try to mimic the suspected bad behavior of the target. He agreed that there could be criminal as well as administrative failures. To the best of his recollection they could not do that for Respondent. He agreed that the scenario for the test was reviewed during the tac[tical] meeting.

Torres agreed that this integrity test involved a female UC who informed the target officer that a suspicious looking man around the corner was looking into cars. Then, someone [the male UC] matching the description she gave is seen standing in the area. He agreed that this second UC was given \$300. Torres agreed that the UC was not selling anything to the officers and that there was no report of a crime being committed or having been committed by him. Torres agreed that the \$300 could have been used to see if Respondent was going to take it. Torres stated that money is a part of all their tests and that it was not specifically a part of the test conducted on Respondent.

Torres did not recall if the plan specified what the male UC was supposed to be doing when Respondent came upon him. Torres opined that when Respondent encountered the male UC, there was no basis for him to conduct a frisk. He agreed that given that the male UC was doing nothing wrong, when Respondent encountered the UC, Respondent could have started a conversation with the UC or he could have gone right by.

When asked if driving right by would have been a failure, Torres responded:

By me well it may have. It may not have. I would probably have to interview him to see what his frame of mind was, what his thought process was... If he would have drove by and then I would have later on probably had to interview him and if his response would have been one in such based on the description I didn't see him doing anything he wasn't looking into cars as I drove past, at the point I would say he passed that integrity test.

Torres denied that because Respondent stopped and questioned the male UC, he wound up with charges, noting that it depended on his state of mind. When asked if, based on what the first (female) UC said, an officer could go over and frisk the man (the male UC), Torres said that he did not know what his frame of mind was, noting, "if he saw a bulge, if he thought he saw a bulge." He agreed that without a bulge he could not search the man.

Torres agreed that, according to the tape, Respondent and his partner never got out of the car. He agreed they started a conversation with the male UC. He did not believe that the male UC asked to leave at any point but he opined that he did not believe the UC was free to leave. He agreed that the UC told them a story about how his girlfriend had kicked him out of the car. He agreed that the UC said that he did not know

how to get home from there. He agreed that the UC said he had called a friend but he did not think the friend was going to come. He agreed that the UC said that he did not have the girlfriend's number because they both used Nextel phones. He also agreed that the UC may have asked about the location of a subway. He agreed that they did not search the UC. He agreed that the UC had identification [REDACTED]

[REDACTED] Torres agreed that the UC indicated to Respondent and his partner that he was lost.

Torres agreed that the same UC officer had been involved in an integrity test with Respondent prior to this incident. Torres had not been on the team at that point and did not know the specifics of the test. Torres agreed that upon reviewing his record, Respondent had passed the prior random integrity test. Torres recalled that after the second test the UC had noted that Respondent had recognized him from the previous test and had found the UC's (false) name in his Activity Log from that earlier integrity test.

On questioning by the Court, Torres agreed that the first element of the integrity test was to see if Respondent would follow through on the complaint made by the female UC and the Respondent did that. The second element he indicated was to see if Respondent did an improper act such as conduct a search without basis and he agreed that Respondent passed that element of the test. With regard to the money, Torres agreed that no integrity issue was raised during the test. He agreed the only issue raised by this test, the UF-250 and Activity Log issues, are administrative.

Sergeant Douglass Maresca

Maresca is a sergeant assigned to Patrol Borough Bronx Investigations Unit. He was involved in the investigation of an incident at the 50 Precinct on September 22, 2007. The investigation was initially handled by Captain Barbuti, who he believes has since retired. Maresca said the Prisoner Roster from the date in question recorded that Respondent was the cell attendant. He said that cell attendants are supposed to search prisoners, lodge them and remove any property such as shoelaces, which can be dangerous. He said the search should be more than a pat down and should include going into the pockets of the prisoners. He testified that the investigation was commenced because one of the prisoners, Person C⁹, attempted to kill himself.

Maresca stated that Person C was lodged into the 50 Precinct at 0730 hours but that was not the first time he was lodged. Person C had been arrested some time earlier that evening and had been brought to Central Booking before being brought back to the 50 Precinct for lodging.

Maresca stated that Person C was interviewed by Barbuti (DX 6a and 6b, audio recording and transcript of the September 22, 2007, interview). In the interview, Person C had said that he had been stopped for a traffic infraction and arrested. He was taken to the 50 Precinct, then to Central Booking, then back to the 50 Precinct. Person C said that when he was arrested he was searched and his belt and shoelaces were taken from him. These items were returned to him and put in his pocket when he was transported to the precinct. He said that when he was searched these items were not removed from his pocket and he was placed in a cell.

⁹ Also referred to in trial transcripts as "Person C."

Maresca also explained that there were errors on the Prisoner Roster in which Respondent listed himself as having inspected prisoners at 0600, 0630 and 0700 hours, which could not have occurred because he did not take the post until 0730 hours.

On cross-examination, Maresca agreed that an officer is never allowed to say that a prisoner was searched by someone else and that officer must conduct a search. He agreed that when a prisoner is first placed in a cell his shoelaces and belt are taken. He agreed that a prisoner can be taken to Central Booking and then returned if they are not arraigned. He agreed that when a prisoner is transported, belts and shoelaces are generally put in the prisoner's pocket. Maresca agreed that Respondent was present when Person C was returned to the cell. He stated that upon Person C's return, Respondent should have done a search and removed the prisoner's belt and shoelaces. He agreed that his investigation concluded that Person C did not have his shoelaces on his shoes at that time. He also agreed that Respondent had no basis for conducting a strip search at that time. Maresca stated that if the prisoner had secreted the shoelaces in a place where Respondent could not detect it, such as in his butt, Respondent would not be held responsible for not finding it.

Maresca was not present for the interview with Person C but, listening to the tape, he agreed that Person C was not in the best frame of mind, noting that Person C had just tried to kill himself. He agreed that Person C was not injured in the incident.

Undercover Officer WXYZ

UC WXYZ has been with the Department about 8 years. [REDACTED]

[REDACTED] He had been assigned to conduct an investigation of Respondent. He

explained that random and targeted tests are different and that if someone were the subject of a random test they could later be the subject of a targeted test.

He stated that on February 8, 2011, he was working along with a female UC. He was assigned to stand on the corner of "like" [REDACTED] The other officer was at the "top" of the block. They received a call the target officer would be in the vicinity of the female UC, who would tell the officer that he [UC WXYZ] was looking into cars. At the time of the test, he had a recording device.

UC WXYZ said that he was approached by the target officer, Respondent, and his partner. He said they drove up and called him over to the vehicle. Respondent was the operator and the partner spoke to him. He said he gave an explanation about his girlfriend getting off the highway and ordering him out of the vehicle before driving off. He said he told them he tried to get a friend to pick him up but and that he did not know where he was.

The officers asked him for ID. He gave them the ID with the fictitious name of Person B. Respondent, he said, had his Activity Log and said that he remembered the UC. UC WXYZ then recounted that there had been a previous integrity test, a random test, about four months earlier. That time, there had been a complaint that he had been selling drugs. He said that on that occasion he was frisked and then released. The necessary paperwork had been done and Respondent had passed that test.

Going back to the second integrity test, UC WXYZ testified that when he told them he had no way of getting home, the officers suggested that he call his girlfriend. Respondent's partner asked to see the phone and then toggled through it to see recent calls. It was then returned to him. The officers then gave him directions to the subway

* and left the scene. Neither officer got out of the car during the interaction. They later determined that no UF-250 been filed and no Activity Log entries had been made regarding the incident.

On cross examination, UC WXYZ stated that he was needed to conduct the targeted integrity test and that he did not realize until near the end of the setting up of the test that Respondent had been a subject of a test with him previously. He said he discussed the issue with a now-retired lieutenant who said there was no prohibition about him being used again. He agreed that during the previous test Respondent had been told that he had sold marijuana and that the officer had frisked him. He agreed that he did not have marijuana or anything that looked like marijuana but that he did have money. He agreed that frisking him was appropriate at that time. He also said that the officers explained why they had conducted the frisk. He said that Respondent, in that instance, had prepared a UF-250 "on the spot" and let him go.

With regard to the targeted integrity test, he agreed that when the officers drove up he was simply standing. He did not try to run nor did the officers stop him from going anywhere. He said that he stepped down to the pavement so they could speak to him. He agreed that they only asked to see his ID after he said he lived in [REDACTED], which is far away from that location in the Bronx. He agreed that it was at that point that Respondent started to make the connection with the previous stop. He agreed the officers never told him that he was not free to go. He agreed they did not frisk him or even touch him.

With regard to who should fill out the UF-250, he stated that both officers work together. He agreed that Respondent was the operator and that the other officer,

Gonzalez, was the recorder. He agreed that only one of the officers is required to complete a UF 250.

UC WXYZ agreed that when he wrote his report of the incident on March 10, 2008, he basically recorded that both the target officer and his partner acted in a professional manner and no violations were observed.

Respondent's Case

Respondent called Police Officer Anthony Gonzalez. Respondent testified on his own behalf.

Police Officer Anthony Gonzalez

Gonzalez was Respondent's regular partner on February 8, 2011. They were in uniform in a marked patrol car in the 50 Precinct. They were flagged down by a female who said there was a suspicious man peering into cars down the block. He did not recall any other description she may have given. As a result, he and his partner went to the corner and talked to the only man who was in the area. He was not peering into cars at the time. They stopped and asked what he was doing and the man told them he was lost. Respondent was the patrol car's operator and he was the recorder. They did not get out of the vehicle during the encounter.

The man told them about an argument he had had with his girlfriend and that she had dropped him off. He said he lived in [REDACTED] and Gonzalez said he asked for ID to verify his story. After a few minutes of talking, they realized that they had met this man

before. At that earlier time, he was stopped and frisked and Respondent had prepared a UF 250.

Given the information he had on this day, Gonzalez said he believed he had a right of inquiry. He knew that he did not have sufficient basis to conduct a frisk. He said he did not believe that every person they come in contact with warrants the preparation of a UF-250. Gonzalez testified that the man was free to go and noted that he had not been stopped against his will. Gonzalez said that if the man refused to provide ID, his suspicion level would have been raised and he would have completed a UF-250. Gonzalez was questioned about this incident by IAB but was never subject to any discipline.

On cross-examination, Gonzalez said that he did not recall taking the man's cell phone and looking through it. He said he reviewed the audio of the integrity test "briefly" but said that it was muffled.¹⁰ He said he checked the ID verbally, that is, to see if it matched what the man had said. He agreed that even if a UF-250 was prepared on an individual previously, a new UF 250 would have to be prepared if there was a new incident and a new basis for doing so.

Respondent

Respondent has been a member of the Department for about six years. He is currently on full duty and working patrol in the 50 Precinct. He has never been on modified assignment. Before joining the Department, Respondent worked in television production, which he had done since 1993.

¹⁰ This is accurate.

Respondent was born in Cairo, Egypt and grew up in New Jersey. He came to the United States at about the age of four and is a naturalized American citizen. He has visited Egypt many times "to numerous to count." He attended the American University of Cairo for about a year and has many friends and family in Egypt.

On September 22, 2007, he was assigned to cell duty, explaining that, as a result of Central Booking being packed, prisoners were sent back to the precincts to be lodged. He had been with the Department about seven or eight months at the time and he had been a cell attendant once or twice before.

Respondent acknowledged that he had pled guilty to failing to properly maintain the Prisoner Roster. He explained:

...[W]hen I did it the one or two times before I always noticed that the numbers for the times were always set up in the logs so I thought automatically that I was supposed to just keep those numbers steady even though I do the check every half hour of all the prisoners I just thought that I would have to put those times in and it seemed like it was missing the schedule times so I marked it in thinking that we must not put it in or something but later on I found out that is exactly times when the prisoners come in to the cells so it was just something I didn't know that was the procedure.

He has not had the problem since then. Respondent did come in contact with a prisoner, Person C. He said that this was at the beginning of the tour. He said he checked him in. Respondent said he frisked him and took everything out of his pockets.

Respondent said that originally he had been told that Person C had been in the hospital but later he learned it was not the hospital and that he had been "checked for DWI or something." Person C had been arrested earlier in the day and had been in the system and was coming back to the precinct.

Respondent stated that with prisoners, safety is always an issue. They always have to be checked even if they had been searched before. He said that he would pat down a prisoner, frisk him, take all the stuff out of his pockets, take off his shoes and pop them together to see if there was anything inside. Among the things taken from prisoners are shoelaces, belts, weapons, keys and anything else that could be used to harm themselves or an officer. He found no contraband on Person C.

Respondent asserted that he had no legal basis to conduct a strip search, nor could he ask Person C to remove his clothes.

During the course of the day, the sergeant, Wilson, pointed out that there might be a problem in cell number 3. She thought the guy might be sick. He said that it looked like he was sleeping. He went inside the cell and Person C was on the floor with his eyes open and groaning. At first, he thought Person C was having an epileptic attack. He went to pull him out but as he did Person C groaned more and he had difficulty removing him. He got closer and lifted Person C's large beard. At that point, he discovered a cord around Person C's neck. He realized Person C had tried to kill himself and he called for someone to give him a knife to cut the cord.

He said first the sergeant came back with a barbecue fork, which was not helpful. Then she came back with a plastic knife, which again was not useful. The third time she returned with a knife and he cut Person C loose. Respondent said that the cord could have been a shoelace which, Respondent said, was very easily concealable. He said Person C could have tied it around his waist or put it in his underwear and it would not have been discoverable by the search he was permitted to do. Person C survived the incident and was later interviewed.

At some point, after Respondent graduated from college and before he joined the Department, he and some of his friends met Person A, who was an investor who took people's money and promised them a 7% return. He later learned that Person A was running a scam. Respondent did not invest with Person A but some of his friends did. A few years after meeting Person A, a friend called Respondent to say that he had been right and that Person A had taken their money and skipped town. His friend told him the amount of money he had stolen from people in Egypt amounted to the equivalent of 30 to 35 million dollars. He said many people were harmed by this.

Subsequently, a friend called to ask him to check and see if he could get information to help prosecute Person A in Egypt. He wanted to know if Person A was in custody in the Hudson County Correctional Facility in Kearny, New Jersey. He said the request was based on a conversation with someone at the American Embassy who believed Person A was being held there. They planned on seeking the help of a lawyer once they had confirmed that Person A was there.

Respondent said he tried calling the facility to get information. He was unsuccessful and was told to go to the facility. On March 30, 2008, while off-duty, he went there. Respondent said he went to the desk, identified himself and told the whole story. The first officer told him that he would have to call the sergeant. Respondent said he had the same conversation with Sergeant Prins. He said he worked at the 50 Precinct and that the person had taken a lot of money from personal friends and that he wanted to confirm that the person was in custody there. He said the conversation was very cordial.

Respondent denied ever stating that he worked for Interpol. He denied ever using the word Interpol. He denied ever saying he was there on official Department business.

Respondent acknowledged that he gave his ID to Prins and that Prins took it to a back room but he did not know if Prins copied it. He said that he had told Prins he was from the 50 Precinct, information that is not on his ID card. Respondent stated that he left when he was told he could not see Person A and he had no further involvement with that matter.

Respondent acknowledged that he pled guilty to the first specification because he did not notify his commanding officer that he was going to visit an inmate. He did not realize he had to because he has no family or friends who are incarcerated. He did not look in the Patrol Guide on this issue because he had no idea he had to.

He repeated that he never said anything about Interpol and noted that, when he looked through the paperwork, he thought there was an audio recording of his conversation at the jail which would prove that he never said that.

With regard to his off-duty employment, Respondent said he has a background in mass communication in satellite operations. He said he worked for PBS and had off-duty employment authorization signed by his commanding officer. He did not learn until his official Department interview that it was only good for one year. He has since updated it and currently has approval. He noted that for the period of January 1, 2009, to May 20, 2009, when he did not have permission, he was not involved in security work and did not utilize his weapon. His work did not interfere with his position as a police officer.

With regard to being absent from his residence and leaving the confines of New York City or the residence counties without authorization, Respondent stated that he had applied for a position with the Honolulu Police Department (HPD) and was informed by HPD that a test for applicants would be given in Las Vegas. He paid for the trip and

hotel accommodations himself. The trip was supposed to last 4 or 5 days from around July 15 to 19, 2008. He expected to put in a Leave of Absence Report (UF-28) for some of the days and link those days with some of his days off.

Before he could do that, Respondent broke his toe while off-duty. He was placed on sick leave by the Department surgeon. Because of this, he could not submit the UF 28s. Respondent acknowledged that he did something he should not have done, which was to travel and take the test while on sick leave. He never got a job with HPD.

Respondent also acknowledged that from approximately June 8, 2007 to March 10, 2009, he failed to live within the confines of the residence counties or New York City. He explained, "I was in a relationship and we were on the verge of breaking up and it was back and forth thing so I would have to sometimes not be at my residence because I have to stay at my parent's house or my friend's house you know we had issues in fighting so at that time we kind of parted ways."

His official residence was in [REDACTED] and his parents resided in [REDACTED]. Respondent said he was aware of the residence requirement but said the relationship was hectic and stressful and needed space to calm things down. He wanted to avoid a domestic violence situation.

With regard to the integrity test of February 8, 2011, Respondent stated that on that date he was working patrol with his partner Gonzalez. He did not recall if they were on a radio run but he did recall that a woman came out from between parked cars. She gave a description of a man peering into cars. They drove down the block and saw a man just standing on the corner, not doing anything. They determined that this was the man

she was talking about and, Respondent testified, they decided to "do their police duty" so they asked him some questions.

Respondent stated that he did not stop the man because he was already stopped. He also stated that it was his partner who began asking questions. The man gave a detailed answer about what he was doing there, something about his girlfriend having ejected him from the car and also that he did not know how to get back home.

As the man spoke, Respondent said, he started to recognize him as someone he had seen before. Gonzalez asked the man for his ID. When he looked at it, he saw the name, he went back to his Activity Log and saw that he was, indeed, someone he had encountered before.

Respondent never took any other police action and he never got out of the car. He said that the man was free to leave and, indeed, they were trying to help him get back to [REDACTED]. Respondent acknowledged that no UF-250 was completed. He explained:

There was no warrant for us to continue we were just at the time getting some type of information from a passerby saying we get that a lot and if there's any type of reason that we could elevate our radar saying that this is something that is suspicious we would take it further at that point he was just standing on the corner and that was it we were just trying to help the guy out.

Respondent noted that, on the previous encounter, there had been an allegation that the man had try to sell drugs. At that time, for their own safety there had been a frisk to see if he had weapons. At that time he made a notation in his Activity Log and then filled out a UF-250.

On cross-examination, Respondent said that he had done a pat down and search of all of Person C's pockets. He did not recall if Person C had a jacket but recalled that he

had a black shirt. He recalled that Person C had work boots without laces. He did not ask anyone regarding the laces because, Respondent said, usually the laces will be thrown in a pocket. He did not tell anyone that he did not locate the laces.

With regard to the trip to Las Vegas, Respondent agreed that he decided to take a chance and go while on sick leave. He said he was going to take a civil service examination and he had already paid the money. He agreed that while he was out on sick report he told the Department that he lived in [REDACTED]. He explained that he had incorrectly stated on direct examination that he had lived, at that time, in [REDACTED]. He agreed that during that time he was "back and forth" to living at his parents' house in [REDACTED].

With regard to his visit to the correctional facility, Respondent agreed that he had friends who had been defrauded by Person A. He agreed that his friends had been in contact with the American Embassy in Egypt. He stated that the only law enforcement agency he had been in touch with was the Hudson County Correctional Facility. He said he called first to try to get some information about Person A but was unsuccessful and was told that it would be best to come out the facility.

Respondent agreed that his close friends had been defrauded by Person A and that he wanted to help them. He said his objective was not necessarily to criminally prosecute Person A but to get some of the money back.

He said he identified himself when he got to the facility. He agreed that he had his firearm with him, which was secured. He agreed that he had not called and pre-scheduled his visit. Respondent acknowledged that he has heard of Interpol but does not know what they do. He agreed that, before this case, he did not know about a Patrol

Guide procedure that would require him to get permission before going to a correctional facility.

With regard to his off-duty employment, Respondent agreed that he had authorization prior to January 1, 2009, he even kept a copy stuck on the back of his locker. He had not been aware that it had to be renewed annually.

With regard to the integrity test, Respondent agreed that the man had said that he had been trying to get in touch with his girlfriend. He agreed that Gonzalez had possession of the cell phone. He did not recall Gonzalez scrolling through the cell phone but did recall him looking at it. He stated that when he had a look at the ID he started flipping through his Activity Log because the man seemed to be a person they had stopped before. He agreed he made no Activity Log entry on February 8, 2011, regarding the interaction with the UC.

FINDINGS AND ANALYSIS

There are four sets of disciplinary charges in this case. The first, Disciplinary Case No. 2008-254, involves an incident with a prisoner that occurred in the 50 Precinct on September 22, 2007. On that day, while Respondent was assigned as cell attendant, a prisoner, Person C, was found to have tried to kill himself with a shoelace.

Respondent has pled guilty to Specification No. 2, which charges him with failing to have properly kept the Prisoner Roster. He has challenged Specification No. 1, which charges him with having failed to search the prisoner.

Respondent acknowledges that he searched Person C and did not find the shoelace. He asserted that he properly searched Person C when he lodged him in the cell

by essentially patting him down and going through his pockets. Respondent contends that Person C, who was transported from another location, had his shoelaces removed earlier in his processing. He contends that, as with other prisoners, Person C would have been given his shoelaces back before being transported. Respondent further contends that the shoelaces could easily have been hidden by Person C so that a standard search, no matter how diligent, would not turn them up. He noted that there was no basis for a strip search and that he therefore could not do one. He contends that he was as diligent as the law and rules allow and that, therefore, he did not fail to make a proper search as the specification contends.

Person C was interviewed later on the day of the incident. He said that he was given his shoelaces and put them in his pocket. If these shoelaces were in Person C's pocket, then Respondent did not do a thorough search. The question, therefore, becomes whether Person C had the shoelaces in his pocket or whether they were hidden somewhere that would not be discoverable by an ordinary search.

I find Person C's statement to be credible on this issue. The reasons for this are simple. Person C would have had no motive to lie, indeed, he might not have even known the significance of the question put to him as to where he had the shoelaces. Respondent himself agreed that, under normal circumstances, a prisoner being transferred would have his shoelaces returned to him and would usually put them in his pocket. Moreover, Respondent agrees that Person C had work boots without shoelaces and he made no further inquiry as to where the shoelaces were. As the cell officer, he should have made greater effort to account for the missing shoelaces.

Because the credible evidence is that the shoelaces were in Person C's pocket and because Respondent was responsible to search Person C and because searching Person C's pocket was a permissible search which Respondent claims he did, Respondent is found Guilty of having failed to properly and adequately search Person C.¹¹

There are two specifications in Disciplinary Case No. 2009-320, which involve a visit he made to the Hudson County Correctional Facility on March 30, 2008.

Respondent acknowledges that he went to the Hudson County Correctional Facility on Sunday,¹² March 30, 2008, in an attempt to see an immigration detainee. He admits that he did so without obtaining prior approval as required under the Patrol Guide as charged under Specification No. 1. He acknowledges that he told the officers at the correctional institution that he was a police officer with this Department but denies saying that he was working on an investigation in conjunction with Interpol or even mentioning Interpol.

There are two witnesses from the Hudson County Correctional Facility that testified; Rivera and Prins. Prins testified that Respondent initially told him that he was part of a joint investigation with Interpol looking into the detainee. Only when he pressed Respondent - or as he put it, "grilled" him - did Respondent acknowledge that he was there on a personal matter. Rivera did not recall any mention of Interpol but he was not part of the main conversation about why Respondent was there. He said that as soon as he learned that Respondent was a member of this Department he called his supervisor,

¹¹ It should be noted that Person C claimed that he was never searched on his return to the 50 Precinct from Central Booking.

¹² The Court takes judicial notice that the day in question was a Sunday.

* Prins. Further, Rivera testified that he only heard bits and pieces of the conversation between Prins and Respondent.

Prins' testimony on this issue is credible. He had no motive to fabricate. He recalled distinctly that Respondent, when confronted on the issue, changed his story from being there on an official investigation to being there on what was essentially a personal matter. While Rivera did not hear the word Interpol, Respondent certainly led him to believe that he was there on official business. We know this because Rivera testified that the reason he notified his supervisor was because other agencies need prior permission before making an official visit. He also took note of the fact that it was unusual for a formal investigative visit to occur on a weekend.

Respondent has argued that some kind of adverse inference should be drawn by the failure of the Department to provide an audio recording of Respondent's conversation at the facility. Certainly, Prins believed that the conversation he was having with Respondent was being recorded but that falls short of proof that there was actually such a recording. Moreover, there is no evidence that a recording of the conversation was withheld by the Department. Indeed, the Department apparently did everything it could to see if there was an audio recording and, if it existed, to provide it. The conclusion the Department came to was that no audio recording exists.

Nor is there any reason to believe that if there was a recording and if it was audible that it would support Respondent as Respondent claims. After all, Prins made the claim that that Respondent mentioned Interpol and he clearly believed the conversation had been recorded.

The credible evidence in this case is that Respondent initially did claim to be at the Hudson County Correctional Facility as part of an official investigation in conjunction with Interpol. Respondent is found Guilty of Specification No. 2.

A third specification in this disciplinary case relates to a lapse in Respondent's authorization to engage in off-duty employment which he has pled guilty to.

Disciplinary Case No. 2009 436 has two specifications to which Respondent has pled guilty. He offered testimony in mitigation. Respondent said that he had planned a trip to Las Vegas for the purpose of taking a test for the Honolulu Police Department. He had booked both a flight and hotel reservation. Prior to the trip, he broke his toe and went out on long-term sick leave. Rather than seeking permission¹³ he left his residence to go on this pre-scheduled trip.

During the investigation, it was learned that Respondent maintained a residence in [REDACTED] with his parents.

Disciplinary Case No. 2011-5996 involves an integrity test that occurred on February 8, 2011, after the commencement of the trial on the other charges. These charges were added to, and became a part of, the instant trial.

The test is easily described. Respondent was on patrol in the 50 Precinct with his partner, Gonzalez. They encounter a woman, who turned out to be an undercover officer (UC). She told Respondent and Gonzalez that there was a strange man around the corner looking into cars.

¹³ Patrol Guide Procedure 205-01, Additional Data, provides a mechanism for obtaining permission to leave the city or residence county while on sick leave.

Respondent and Gonzalez proceeded around the corner looking for that man. They encountered someone who fit the description but who was not looking into cars. This, of course, was another UC, UC WXYZ. UC WXYZ, who gave his name as "Person B," told the officers that he was driving with his girlfriend when they had a fight and she kicked him out of the car. He volunteered, in detail, how when his girlfriend ordered him out of the car he complied because, as he put it, "you know how women are" and he did not want any trouble. He volunteered that he had never been arrested. He said he was lost and that he had called a friend and it would be a long time until the friend got there.

The officers asked where he lived and he said he lived in [REDACTED]. When Respondent saw the driver license, issued under the false name, "Person B," Respondent was confirmed in his suspicion that he had stopped and frisked him previously on an allegation that he was selling drugs.¹⁴ The license indicated that "Person B" lived in [REDACTED].

Respondent and Gonzalez also asked to look at "Person B's" cell phone. They asked the name of the girlfriend. There was also some discussion between Respondent and "Person B" about the previous stop. "Person B" claimed to remember being stopped but said he did not recall the officers. He explained his presence in the Bronx on that day by saying he did some work in the Bronx but did not know his way around.

The Department claims that a Stop, Question and Frisk Report (UF-250) is required because, the Advocate argued, the officers had taken "Person B's" ID and cell phone and that "Person B" was not free to leave. Respondent and Gonzalez claim that they were simply trying to help "Person B," who claimed he was lost and cold. The driver license and _____

¹⁴

Respondent had properly done a Stop, Question and Frisk Report following that integrity test and no charges were preferred against him at that time.

cell phone were voluntarily given and that they had no basis to prevent the UC from leaving and that “Person B” was free to leave. Indeed, as Respondent and Gonzalez point out, in the end they give him directions to the subway and he left while they never exited their patrol car.

No one has questioned the way Respondent and Gonzalez handled the situation, indeed, there is general agreement that they handled it well. The question raised by the charges in this case is whether they were required to complete a UF-250 and make an Activity Log entry regarding the incident.

It is clear that Respondent and Gonzalez understood that they had no basis to hold “Person B” and there is no indication that he would have been held had he tried to leave. On the other hand, their suspicion level was clearly raised both by the original complaint made by the female and by the somewhat inconsistent and incredible statements made by “Person B” when the officers told him they recognized him from the previous stop. His claim to not know the Bronx and his admission that he used to work there, indeed within the same precinct, seem at least somewhat inconsistent.

While I disagree with the Department’s reasoning as to why this incident had to be recorded, I agree that it should have been the subject of both a UF-250 and an Activity Log entry. My reasoning is based on the fact that Respondent and Gonzalez engaged “Person B” in conversation based on a complaint made by the woman who suggested that he was acting in a suspicious manner. Put another way, they were not stopped by “Person B” to give directions, they were stopped because someone believed that he was potentially engaged or about to engage in criminal conduct.

Additionally, it would be unusual to ask someone who is lost for their license or cell phone. "Person B" said he came from [REDACTED] and was lost. If they were simply giving directions, they would never have asked for either the cell phone or license.

What Respondent and Gonzalez did was, in fact, pretty good police work. They turned what could have been a hostile and unpleasant encounter into a helpful one. "Person B" turned over his possessions voluntarily.¹⁵ They questioned him to satisfy themselves that there, in fact, was no evidence of criminality.

The next question that this situation raises for this proceeding is whether the failure of Respondent and Gonzalez to prepare a UF-250 and an Activity Log entry should be subject to disciplinary sanction.

Disciplinary sanctions are generally imposed for actions that manifest either incompetence or misconduct (see Civil Service Law section 75 subd. 1). It is the view of this Court that the circumstances here do not rise to the level of either incompetence or misconduct.

As noted, the circumstances of this factual scenario are not clear cut. This is underscored by the fact that, while this Court agrees with the conclusion that the situation should have been recorded, the rationale is different than the one offered by the Department and, indeed, this Court disagrees with the Department's rationale. Adding to the ambiguity of this situation is the fact that Torres, who was the supervisor of this integrity test, suggested that if Respondent and Gonzalez had simply driven by without speaking with "Person B" at all, there may have been no integrity test failure.¹⁶ Thus, taking

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One of the issues unexplored by these charges relates to the right Respondent and Gonzalez might have had to ask for the cell phone or scroll through it without obtaining prior permission.

¹⁶ In fact, Torres said the decision on that would have to depend on their state of mind, adding a further element of ambiguity to the pass/fail result of this test.

no police action might have brought about a better result for Respondent than taking effective police action. It is clear that this scenario provides an instructional or teachable moment and not one that should be the subject of formal disciplinary action.

Perhaps the greatest evidence that even the Department recognizes that this is not misconduct is the fact that Gonzalez, who participated in the same transaction and who was as culpable as Respondent, was not subject to any form of discipline or punishment.

It is worth mentioning that, just a few months earlier, Respondent and Gonzalez had been subject to an integrity test during which a frisk had been conducted.

Respondent, in that case, completed all the necessary paperwork. Among other things, that prior event establishes that Respondent did not fail to do paperwork this time out of laziness, but out of a genuine belief that the paperwork was unnecessary.

Based on all of the above, I find that Respondent did not engage in misconduct which warrants formal disciplinary action. It is recommended that these charges be Dismissed.

PENALTY

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on January 9, 2006. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department has asked for a penalty involving termination of Respondent's employment. Respondent asks for a lesser penalty and notes, among other things, that Respondent has never been suspended or modified and has continued to work as a patrol officer in the 50 Precinct.

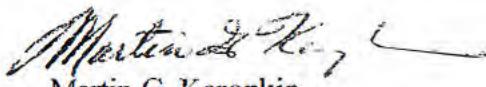
Respondent has been found Guilty of several failures in his work as a police officer; failing to maintain a Prisoner Roster, failing to properly search a prisoner, going to Las Vegas while on sick leave, maintaining a residence in [REDACTED] and maintaining off-duty employment while his permission to do so had lapsed. None of these, even in combination, would ordinarily justify termination. He has also been found Guilty of going to the Hudson County Correctional Facility to visit a detainee without permission and representing himself as being engaged in an investigation where he was working for this Department and Interpol to gain access to that detainee.

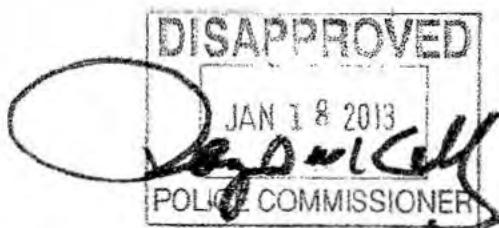
It is obvious that the last charge is the one that the Department's penalty recommendation is based upon. The question then becomes: is this a termination offense? The answer, in the view of this Court, is that while very serious, it is not.

There is absolutely no evidence to indicate that Respondent engaged in this conduct for personal gain or for any corrupt motive. On the contrary, Respondent's claim that he was trying to assist people who he believed had been the victims of fraud on the part of the detainee is uncontested. Respondent's actions were clearly misguided and merit significant penalty, but not termination.

Factoring in all of Respondent's misconduct, this Court recommends that the Respondent be DISMISSED from the New York City Police Department, but that his dismissal be held in abeyance for a period of one year, pursuant to § 14 115 (d) of the Administrative Code, during which time he remains on the force at the Police Commissioner's discretion and may be terminated at anytime without further proceedings. Further, this Court recommends that the Respondent forfeit 45 vacation days.

Respectfully submitted,


Martin G. Karopkin
Deputy Commissioner Trials



POLICE DEPARTMENT
CITY OF NEW YORK

From: Deputy Commissioner Trials

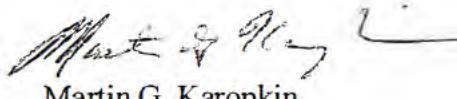
To: Police Commissioner

Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER MOHAMED ABDELAL
TAX REGISTRY NO. 939838
DISCIPLINARY CASE NOS. 84525/08, 85612/09,
85684/09 & 2011-5996

In 2010 and 2011, Respondent received an overall rating of 3.5 "Highly Competent/Competent" on his annual performance evaluation. He was rated 3.0 "Competent" in 2009.

[REDACTED] [REDACTED] [REDACTED]. He has no prior formal disciplinary record.

For your consideration.



Martin G. Karopkin
Deputy Commissioner Trials